

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1011 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMARCHAND JAGJIVANDAS SHAH

Versus

KARSAN DAHYABHAI

Appearance:

MR MJ NAGARKAR for MR SN SHELAT for Petitioner

MR RN SHAH for Respondent No. 1,2 and 3

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner has challenged by this Special Civil Application the judgment of the Gujarat Revenue Tribunal dated 4th September, 1981 made in Revision Application No.TEN.B.S.241 of 1979. The suit filed by the petitioner for the eviction of the respondent-tenant was dismissed on the ground of waiver. It is not in dispute that this

Court in the case of Dahyabhai V/s. Amarchand reported in 12 GLR Page No. 235 held that the principle of waiver applies in the case of determination of tenancy under the Bombay Tenancy and Agricultural Lands Act. The finding of the Tribunal that the tenant had remitted Rs.83/- by Money order towards the rent and that amount was received by the landlord on 14-6-78 has not been challenged. Again the finding of the Tribunal that the tenant had remitted Rs.83-77 by money order towards the rent was received by the landlord on 13-7-69 has not been challenged. Earlier the party had come up before this Court by filing the Sp. Civil Application No.96 of 1966 which was decided on 20th January, 1970, and the decision has been reported in 12 GLR Page, 235. This court has discussed the case law on the subject of the waiver of the right of eviction and held that if the landlord files the suit for recovery of rent for the subsequent period after termination of the contractual tenancy and thereafter the tenant pays rent in execution of such decree, the requirement of the provisions of sec. 113(a) of the T.P. Act would be fulfilled so as to bring the case under the principle of waiver as contemplated therein. The matter has been remanded by this court only because one of the contention has been made that the Prant Officer before whom this point had been raised did not record any evidence and even the Revenue Tribunal had not gone into the facts as it came to the conclusion that the principle of waiver could apply. The matter has been remanded to the Mamlatdar for giving an opportunity to both the parties to lead the evidence on the question of applicability of principle of waiver in the case. The landlord did not lead any evidence on this question. The landlord has failed to establish, by not producing the evidence, though he has been given an opportunity for the same by this Court by remanding of the matter, that the rent which was accepted by him was without prejudice to rights, and that the amount was accepted by him for compensation for use and occupation. In the absence of such evidence, it is difficult to accept the case of the petitioner. It is also difficult to accept that the amount of the rent sent twice by the tenant by money order was in fact, in substance the amount of the compensation for use and occupation of agricultural holdings. Learned Tribunal relying on the evidence of the tenant has rightly held that the principle of waiver is clearly applicable in the present case. I do not find any illegality in the order of the Tribunal made in the present case which calls for interference of this Court. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged with no order as to costs.
